

Exhibit C

Date: July 15, 2003

**Terminal Services Agreement
Deer Park Rail Terminal**

This Agreement, made effective on the above noted date, is between **The Burlington Northern and Santa Fe Railway Company** (the "Customer") and **Deer Park Rail Terminal, Inc. ("DPRT")**. Customer and DPRT shall collectively be referred to as the "Parties"; each individually, a "Party".

Witnesseth, whereas Customer desires to obtain railcar staging and terminal switching services within the Deer Park Rail Terminal (the "Yard") in order to provide better service to its Customers, under the terms and conditions herein specified.

1. **Railcar Spots.** DPRT shall, make available to Customer trackage within the Yard sufficient room to place up to six hundred (600) Customer empty covered hopper railcars (Railcar Spots). DPRT, at its sole discretion, reserves the right to allocate available trackage within the Yard based on operational needs, Customer contracts and other fulfillment obligations. Customer shall be provided a daily inventory listing identifying specific track location of Customer railcars within the Yard. DPRT shall allow Customer personnel access to Customer railcars, subject to advance notice to DPRT. During such periods of access, Customer shall comply with all reasonable health and safety procedures and restrictions imposed by DPRT or required by applicable law with respect to health, safety and other matters.
2. **Term.** The term of this Agreement shall commence on the above date, and, commencing one hundred twenty (120) days after the above date, this Agreement will terminate at the option of either the Customer or DPRT upon thirty (30) days written notice to the other party after the 120 day initial period.
3. **Rates and Charges.** Customer shall pay DPRT the terminal service charges in attached Exhibit A. Charges shall commence on date of (or any portion thereof) railcar placement at DPRT and continue through date of (or any portion thereof) departure. Commencing one hundred twenty (120) days after the above date, DPRT shall have the right to change and adjust the Yard switching and services rates in Exhibit A after the initial 120-day period. Customer shall be given thirty (30) days prior notice of any such rate change(s). Any and all third-party charges handled by DPRT on behalf of the Customer shall be invoiced at cost plus 15%.

Rates specified in Exhibit A are based on a standard car length of sixty-five (65) feet. Oversized or articulated cars shall be subject to a daily rate adjusted in direct proportion to this standard length.

*Example: Oversize Daily Rate = Standard Daily Rate * (Actual car length / 65)*

4. **Railcar Overages.** Should the number of Customer railcars delivered to the Yard exceed the number referenced in "Section 1: Railcar Spots", the Customer shall be charged for these excess railcars in accordance with the rate schedule in Exhibit A. However, DPRT is under no obligation to accept, and at its sole option may refuse delivery of, such excess railcars. Furthermore, DPRT reserves the right to return, at Customer's sole cost, any excess railcar(s) to Customer. DPRT shall notify the Customer in writing of any overages, and the disposition of the cars prior to sending them back to Customer.
5. **Delivery, Acceptance and Placement.** The Customer shall advise DPRT of impending railcar deliveries to the Yard. DPRT shall require all railcars entering the Yard to be in good order and condition. Under no circumstances shall DPRT be required to accept any railcar in such a condition that it presents a danger to persons, property or the environment. To the extent necessary to avoid congestion in and around the Yard, DPRT may accept Customer railcars requiring minor repairs and shall notify Customer of such necessary repairs. The placement of accepted railcars within the Yard shall be at the sole discretion of DPRT. The switching and movement of railcars within the Yard shall be under the direction of DPRT and reasonable service standards consistent with industry practice shall be maintained by DPRT.
6. **Outbound Railcars.** DPRT shall deliver rail cars to Customer or Customer's designee within twenty-four (24) hours from receipt of the Customer's car order request, bill of lading, or accepted equivalent in the blocks specified by Customer's car order request.
7. **Billing / Shipping Instructions.** Customer railcars destined for the Yard are to be consigned to Customer, c/o Deer Park Rail Terminal, Pasadena, Texas (ZTS - 41-756-00) with a copy of the bill of lading, or accepted equivalent, sent to DPRT. DPRT is not obligated to accept any Customer railcars in excess of the contracted "Railcar Spots" consigned to the Yard or to DPRT without prior written notification and written acceptance. If a Customer railcar is consigned to DPRT or to the Yard in excess of the contracted "Railcar Spots", without prior written notice, DPRT may accept such railcar, subject to the condition of such railcar and space availability within the Yard, and Customer shall pay all fees and charges assessed to DPRT by the applicable rail carrier, as well as the fees set forth on Exhibit A.
8. **Payment Terms.** DPRT shall provide Customer with detailed invoices showing all fees and charges assessed; including railcar identification as may be requested by the Customer. Customer shall pay all fees and charges under this Agreement by Due Date (net 30 days from date of invoice) specified on invoice. Outstanding balances shall be subject to a service charge rate of eighteen percent (18%) per annum.

9. Insurance. DPRT shall procure and keep in effect during the term of this Agreement:

- (i) Property insurance, which equals the sum of the AAR casualty value and replacement, cost value.
 - (ii) Commercial General Liability policy (or other policy which will fulfill the requirements of this section) including Public Liability, Person Injury and Property Damage, Federal Employers Liability Act Liability, Bill of Lading, Fuels and Lubricants Endorsement, Limited Seepage and Pollution endorsement and Contractual Liability for the liability assumed under this Agreement, with a combined single limit of not less than Five Million dollars (\$5,000,000.00). Policy terms shall not exclude or limit coverage where activities or operations are on or near railroad tracks. If construction or demolition work is to be done within fifty (50) feet of railroad property, the limitation for contractual liability must be specifically deleted. If the policy is written on a claims made basis, a specific three-year tail endorsement acceptable to BNSF must be added to the policy. The policy shall have an endorsement that shall be sufficient at all times to prevent BNSF, the owner of any and all property encumbered by easements affecting the Leased Tracks, and any party secured under any loan or note then encumbering the Leased Tracks, from becoming coinsurers, and shall not require deductibles in excess of Twenty Five Thousand dollars (\$25,000.00) on the liability policy and Ten Thousand (\$10,000.00) or 1% of the principal amount of any loan or note then encumbering the Leased Tracks, whichever is less, with respect to the property insurance.
 - (iii) If Workers' Compensation applies, GVSR shall maintain Workers' Compensation coverage as is required by State law, but if optional under State law the insurance must cover all employees anyway. The policy must have an alternate employer endorsement naming the BNSF as the alternate employer. FELA must be included on an if any basis. The Certificate must contain a specific waiver of the insurance company's subrogation rights against the railroad.
 - (iv) Automobile Liability insurance covering "any auto" including bodily injury and property damage, with coverage of at least \$1,000,000.00 combined single limit or the equivalent.
- (b) All insurance shall be placed with insurance companies licensed to do business in Texas, and with a current Best's Insurance Guide Rating of A and Class VII or better.
- (c) In all cases, the policy must be endorsed to state that BNSF, the owner of any and all property encumbered by easements affecting the Leased Tracks, and any party secured under any loan or note then encumbering the Leased Tracks, are additional insureds. The additional insured endorsement shall at a minimum include coverage for the general supervision performed by the railroad. Furthermore, the holder of any loan or note then encumbering the Leased Tracks

shall also be a loss payee subject to a mortgagee clause (without contribution), of the standard form attached to or otherwise made a part of the applicable-policy.

- (d) Any coverage afforded the BNSF, the owner of any and all property encumbered by easements affecting the Yard Tracks, and any party secured under any loan or note then encumbering the Yard Tracks, the Certificate Holders, as Additional Insureds shall apply as primary and not excess of any insurance issued in the name of BNSF, the owner of any and all property encumbered by easements affecting the Yard Tracks, and any party secured under any loan or note then encumbering the Yard Tracks.
- (e) DPRT shall furnish to BNSF an Accord Certificate of Insurance satisfactory to BNSF, certifying the issuance to BNSF of the policies of insurance providing the types of insurance and limits of liability prescribed above, and stating the BNSF, the owner of any and all property encumbered by easements affecting the Yard Tracks, and any party secured under any loan or note then encumbering the Yard Tracks shall be given not less than thirty (30) days' written notice by U.S. Certified mail (postage prepaid), prior to any material change, substitution or cancellation prior to normal expiration dates. The words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" must be removed. Cancellation or expiration of any of said policies of insurance shall not preclude BNSF from recovery thereunder for any liability arising under this Agreement.

10. Liability and Indemnification

DPRT hereby agrees to indemnify, protect, save and keep harmless BNSF and its successors, assigns, agents and servants, from and against, any and all Claims (including Environmental Claims) of whatsoever kind and nature, imposed on, asserted against or reasonably incurred by BNSF or any of its successors, assigns, agents or servants (excluding acts constituting willful misconduct, bad faith, gross negligence or fraud), in any way relating to or arising out of (i) the condition of any trackage herein described or used in the provision of services hereunder at any time during the term of this agreement; (ii) DPRT's use and possession of any such trackage, (iii) DPRT's violation of any of the terms of this agreement or any of DPRT's covenants, representations or warranties contained herein; (iv) any injury or death to persons, or damage to property occurring on the trackage or property of DPRT or any properties used in the provision of services hereunder; (v) any liability for freight loss or damages; (vi) any liability to any railcars or equipment. DPRT shall not be required to indemnify BNSF or its successors, assigns, agents and servants for (i) Claims to be borne pursuant to the express provisions hereof by the person otherwise to be indemnified hereunder or (ii) Claims resulting from the willful misconduct or gross negligence of the person otherwise to be indemnified hereunder. If any party hereto shall have knowledge of any claim or liability hereby indemnified against, it shall give prompt written notice thereof to the other parties.

Notwithstanding any provision to the contrary hereinabove, and except to the extent otherwise provided in the Interchange Rules referenced below, all loss and damage to railcars or loss and damage caused by defective railcars and/or resultant spillage from such defective railcars shall not be an indemnified obligation hereunder, unless such damage, railcar defect or resultant spillage is caused by the negligence of DPRT, the condition of the trackage, or a breach of a duty hereunder by DPRT. Otherwise, the parties hereto acknowledge and agree that no indemnification obligations shall arise hereunder for loss and damage to railcars or loss and damage caused by defective railcars and/or resultant spillage from such defective railcars.

Notwithstanding any provision to the contrary hereinabove all loss and damage to railcars shall be governed by the Association of American Railroads Interchange Rules, as same may be amended from time to time.

BNSF agrees to indemnify, protect, save and keep harmless DPRT and its principals, officers, directors, partners and their successors, assigns, agents and servants, from and against, any and all Claims (including Environmental Claims) of whatsoever kind and nature, imposed on, asserted against or reasonably incurred by DPRT or any of DPRT's principals, officers, directors, partners or any of their successors, assigns, agents or servants to the extent arising out of BNSF's negligence or breach of duty in the use or occupation of the trackage within the Yard. BNSF shall not be required to indemnify BRT or any of its principals, officers, directors, partners, or their successors, assigns, agents and servants for (i) Claims to be borne pursuant to the express provisions hereof by the person otherwise to be indemnified hereunder or (ii) Claims resulting from the willful misconduct or gross negligence of the person otherwise to be indemnified hereunder. If any party hereto shall have knowledge of any claim or liability hereby indemnified against, it shall give prompt written notice thereof to the other parties.

11. **Performance.** DPRT will undertake and perform its work and services hereunder in compliance with all relevant laws, rules, and regulations and at all times in a safe and timely workmanship like manner. The Parties shall first attempt to resolve any dispute arising from or relating to switching by consultation between appropriate representatives of the Parties. Such consultation shall take place within the ten (10) day period following receipt by one Party of written request for consultation from the other Party (the "Consultation Party"). Following consultation as referred to in the immediate preceding sentence, if in BNSF's reasonably exercised discretion the switching Services provided by DPRT or its agent hereunder remain unsatisfactory during the fifteen (15) day period following the conclusion of the Consultation Period, BNSF may terminate this Agreement on five (5) days written notice, specifying evidence of the reason for its dissatisfaction.
12. **Communications.** Customer and DPRT will establish designated telephone, fax, electronic mail, and pager contacts between Customer and DPRT designated personnel. All established communications contacts will be published and maintained by Customer and DPRT in their respective offices. Notices related to this Agreement will be directed to the following:

For DPRT -

Billing Related To: Deer Park Rail Terminal, c/o U.S. Development Group, 5100 Underwood Road, Pasadena, Texas, 77507, ph: (281) 291-9082, fax: (281) 291-0321, Attn: Robert Eckles (reckels@us-dev.com);

Rail Operations, Car Storage and Movement Related To: Deer Park Rail Terminal, Inc., 5100 Underwood Road, Pasadena, Texas, 77507, ph: (281) 291-8267, fax: (281) 291-7708, Attn: DPRT Operations Manager (customercare@us-dev.com).

For Customer -

Billing Related To:

The Burlington Northern and Santa Fe Railway Company
~~2650 Lou Menk Drive, Fort Worth, TX 76131~~ 1410 WOODSTEAD CT. SUITE 470, THE WOODLANDS, TX 77380-3413
Attention: LARRY NORTHCUTT, ph: 281-465-5603, fax: 281-465-5622
Email: LARRY.NORTHCUTT@BNSF.COM

Rail Operations, Car Storage and Movement Related To:

The Burlington Northern and Santa Fe Railway Company
~~2650 Lou Menk Drive, Fort Worth, TX 76131~~ 1410 WOODSTEAD CT. SUITE 470, THE WOODLANDS, TX 77380-3413
Attention: William M. Stephens, ph: 281-465-5602, fax: 281-465-5621
Email: _____

13. Governing Authority. The interpretation and construction of this Agreement, and all matters related thereto, shall be governed by, and construed in accordance with the laws of the State of Texas.

14. Confidentiality. The Parties agree that this Agreement is to remain confidential between the Parties. Neither Party shall discuss or disclose any of the contents, terms and conditions of this Agreement with any outside individuals, unrelated entities or third parties without the express written permission of the other Party, provided, however, each Party shall have the right to disclose the contents, terms and conditions of this agreement to a potential buyer of that Party or its assets. Furthermore, it is understood that the Parties shall have the right to disclose the contents, terms and conditions of this agreement to its agents, consultants and advisers on a need-to-know basis, provided the disclosing Party shall require confidential treatment of disclosed information by a receiving party.

15. Contradictions. In the event of a contradiction between this Agreement and the terms and conditions set forth in Exhibit A, the terms and conditions set forth in Exhibit A shall prevail.

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Special Provisions.

- a) The Parties shall conference daily by telephone at a mutually agreed-upon time.
- b) DPRT at its sole cost and expense shall provide to Customer AEI data in a reasonably acceptable format from DPRT's existing system.
- c) DPRT and the Port Terminal Railroad Association (the "PTRA") have entered into an Agreement whereby certain blocks of railcars of fifty (50) or more may be delivered to the Yard for a delivery charge of \$30.00 per railcar. The PTRA has agreed "to stipulate that if the PTRA elects to deliver cuts of cars which are less than 50 cars, DPRT will still be billed at the \$30.00 per car rate". If the PTRA chooses to withdraw or amend this stipulation, DPRT will provide a 48 hour written notification, and at such time all Customer railcars delivered to the Yard in a block of less than fifty (50) railcars will be, at the discretion of the PTRA, be assessed a surcharge rate equal to the PTRA delivery charge assessed DPRT for "under minimum block" cars, which charge is, as of the date hereof \$50.00 per railcar.

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Agreed and accepted, executed as of the date first written above by the authorized representatives below:

The Burlington Northern and Santa Fe Railway
Company

By: 

Printed Name: Rollin D. Breidenbach

Title: VICE PRESIDENT - SERVICE DESIGN & PERFORMANCE

Deer Park Rail Terminal, Inc.,
a Texas Corporation

By: 

Printed Name: Dan Ferguson

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EXHIBIT A**Rates and Charges****Deer Park Rail Terminal****Effective June 15, 2003**

On the day a Customer railcar is placed into the Yard, the Customer shall incur a one-time switching services charge (\$60.00) per railcar (the "Base Switching Services Charge").

If a railcar is delivered in error to the Yard, that is, a railcar is delivered which cannot be classified into one of Customer's five (5) outgoing blocks, and if such a railcar remains in the Yard longer than two (2) days from the day of placement of the car in the Yard, DPRT shall be entitled to charge Customer for railcar handling at a rate of \$20.00 per each such railcar per day from date of placement, plus a switch fee of (\$60.00) charged at the time of release of such railcar from the Yard (the "Setback Charge").

In addition to the Base Switching Services Charge and the Setback Charge noted above, Customer shall also pay an excess capacity charge (the "Excess Capacity Charge") which will be assessed for each day in which the "overnight" railcar count attributable to Customer exceeds 600 railcars. The overnight railcar count shall be calculated by counting the number of Customer railcars remaining in the Yard after the conclusion of a day's business including the receipt of inbound railcars and the release of outbound railcars for the day. Customer shall be charged \$20.00 for each railcar remaining overnight in the Yard in excess of the designated 600 railcars.

**DPRT 00162
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Form DPRT-S Rev. 3/8/02

RECEIVED TIME JUL. 7. 3:08PM

PRINT TIME JUL. 7. 3:37PM